

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR08-1161

CARL E. CARROLL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered MAY 27, 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CR07-2882]

HONORABLE JOHN W.
LANGSTON, JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Carl E. Carroll was tried by a jury on the charge of terroristic threatening in the first degree. He was convicted of the lesser-included offense of second-degree terroristic threatening and was sentenced to pay a \$750 fine. He now appeals, challenging the sufficiency of the evidence regarding two elements of the crime. We affirm.

A person commits the offense of terroristic threatening in the second degree if, with the purpose of terrorizing another person, the person threatens to cause physical injury or property damage to another person. Ark. Code Ann. § 5-13-301(b)(1) (Repl. 2006). Thus, the conduct prohibited by this section is the communication of a threat with the purpose of terrorizing another. *Lewis v. State*, 73 Ark. App. 417, 44 S.W.3d 759 (2001). It is not necessary that the recipient of the threat actually be terrorized. *Id.* It must be the accused's

“conscious object” to cause fright. *Knight v. State*, 25 Ark. App. 353, 758 S.W.2d 12 (1988).

In the present case, the State presented evidence of Carroll’s behavior on May 25, 2007, after he was stopped by Detective Beverly Hughes of the Sherwood Police Department. Detective Hughes testified that the following events occurred while she was working seat-belt enforcement and running radar on Pennwood Drive. Using her siren and lights, she initiated a traffic stop after clocking Carroll’s SUV going thirty-five miles an hour in a twenty-mile-an-hour zone and observing that he did not have his seat belt on. Carroll made two right turns and finally stopped on Merriwood. Hughes approached his car, observed a child in the back seat, noticed that Carroll was wearing his seat belt, and told him that she was issuing him citations for speeding and no seat belt. He responded: “You’re giving me two citations?” She explained that there had been numerous complaints of speeders on Pennwood; he commented, “F*** the residents on Pennwood.” He scribbled on his ticket, handed it back to Hughes, and said, “Give me the f***** ticket and shut the f*** up, b*****.” By this time people were in their yards watching the situation, and Carroll was talking loudly enough for them to hear. At this point, Hughes advised him that he was under arrest for disorderly conduct and told him to step out of the vehicle. He said that she was not going to take him to jail by herself.

Hughes testified, “I felt like I needed protection because of his demeanor, his attitude towards me, his loud behavior toward me. You could tell he was very agitated.” She put her Taser’s laser light on him, and he complied with her order to exit his vehicle and put his hands behind his back. While waiting for other units she had requested to arrive, she was

approached by a woman, apparently Carroll's wife, whom Hughes had not seen in the vehicle; the wife complied with Hughes's order to get back into the car. Other officers arrived, took Carroll into custody, handcuffed him, double locked the handcuffs, and transported him to the police department.

Hughes also testified about Carroll's behavior when she arrived at the police department, before he made a telephone call. She stated: "They were taking his property from him and getting ready to place him in a cell. He was just continuing with his talking and running his mouth, making comments." She said that Carroll commented he would not make a very good cop because he "could not lie" as well as she had and that he "made reference to shooting whoever he wanted, and lie about the reason and apparently getting away with it," which Hughes "took . . . as his behavior that had taken place throughout the contact with him." She testified that Carroll made "continuous comments in relation to me lying about what had happened."

Officer Roger Perry, a jailer for Sherwood, and Tammy Turner, a dispatcher and jailer, testified that they had contact with Carroll when he was booked into the detention facility and allowed to place a telephone call. Perry, who was the intake officer, testified that Carroll was loud and agitated when Perry first saw him, objecting to being arrested and saying that the charges were trumped up. Perry testified that Carroll threatened Detective Hughes, who was not present in the area, saying he was going to kill her and remarking, "I'm going to get that nasty white b****."

Officer Perry stated that a posting on the wall where Carroll made his call read as

follows: *All calls are recorded. . . . This facility is subject to video and audio surveillance.* Perry remembered Carroll's saying three or four times, "I'm going to get her. I'm going to kill her." Perry testified that he knew the threats were specifically made to Detective Hughes because she was the only female officer working at that time and was the one who arrested him. Perry also testified that, upon hanging up the telephone, Carroll told him, "Y'all are going to have to shoot me once I leave this building." On cross-examination Perry said that he did not believe that Hughes was "present" when the statements were made; on re-direct he said that she was somewhere in the building.

Officer Tammy Turner also described Carroll as agitated and "mouthing" when he was first brought in. She said that he was first placed on a bench and later put in the book-in room, about twenty-five feet from her, where Officer Perry processed him into jail. She could not hear the whole phone conversation but could hear him yelling periodically at whoever he was talking to. She said he was agitated, loud, and mad during the conversation: she kept hearing him say "the nasty white b****." Turner further testified:

And then I actually picked up the phone, and called Officer Perry and was like, "You don't need to be sitting here letting him threaten her on the phone and stuff. Because I could hear him all the way up front. He was going to get the nasty white b****. At one point I could hear him say he wanted to kill the white nasty b****. . . . I took it as he was referring to Officer Hughes because he had been very agitated at her when she brought him in. I don't recall that Officer Hughes was back there at that time. I think she had already left, but I'm not sure.

Lieutenant Jeff Hager, of the police department's investigation division, testified that he took statements from the officers involved and pulled the phone records after it was brought to his attention that possible threats had been made in the detention facility. Hager

stated, “Those threats were directed at Detective Beverly Hughes.” He said that he ultimately typed the affidavit for Carroll’s arrest on the charge of terroristic threatening.

Carol Bowen, secretary of the detective division, testified that she made a CD of Carroll’s telephone call from the recording system and transcribed the conversation. Copies of the transcript were distributed to the jury as visual aids while they listened to a recording that includes these statements by Carroll:

That’s why I want to kill this nasty white b****.

I should have hit her and taser her with it [sic] in her face.

They ain’t going to hurt me. It’s kill me or leave me the f*** alone. They ain’t going to hurt me. So just try to (inaudible) so I can get the f*** out of this building.

I’ll just sit in this mother f*****. I’m going to get this b*****.

Carroll testified in his own defense. He admitted saying “‘F’ the people on Pennwood” and telling Detective Hughes that she would not take him to jail by herself. He denied saying “give me the ticket” or “b****, get out of my face.” He testified having the Taser pointed at him was what had made him so angry. He said that he did not curse Hughes until the male officers took him to jail and he was handcuffed, and he admitted also being angry at that time. He testified that he never threatened to kill her, and he emphasized that he “never outright threatened to kill her to any police officers.”

Carroll testified that Hughes was already present at the jail when the other officers brought him in; he admitted saying then that he “couldn’t be a cop” because he could not lie and that he “couldn’t be the way you’re doing.” He testified that Hughes was standing there

smiling when he arrived, talking to him about what had just transpired, and that they had a conversation with each of them smiling and laughing about his arrest. He testified that Hughes left the building when this conversation was finished.

Finally, Carroll testified that the anger reflected in the recorded conversation with his wife arose from being locked up and not able to make bail. He denied saying on the telephone that he “was going to kill Detective Hughes” or any police officer. He denied telling any officer that he was going to kill Hughes, but he admitted being very upset. He said that Hughes had ticketed him on Pennwood on a previous occasion without running radar, and he thought she had lied about his exact speed then. He admitted not wearing his seat belt on May 25, 2007, but expressed doubt that he was also speeding then.

Detective Hughes verified in rebuttal testimony that the May 25, 2007 traffic stop was not the first time she had encountered Carroll. She said that she had stopped him for speeding on Pennwood four years earlier and had let him go with a citation. She characterized their first exchange as similar to the recent one and described his previous demeanor as belligerent, loud, and obnoxious, and she said he had “peeled out onto Kiehl Avenue” after receiving the citation. She testified that he had “a history” of being angry with her on traffic stops and that no “laughing, cordial conversation” took place at the jail on May 25.

Carroll moved for a directed verdict at the conclusions of the State’s case-in-chief, the case for the defense, and the State’s case on rebuttal. He repeats on appeal the arguments he made below, asserting that the State’s witnesses and the recording of his conversation with his wife do not constitute substantial evidence that he spoke about Detective Hughes with the

purpose of terrorizing her. He asserts that his statements about wanting to “get” and “kill” her were neither made to her nor made where she could overhear them, nor did the State introduce substantial evidence that he intended that the jailers would convey his statements to her.

A motion for a directed verdict is treated as a challenge to the sufficiency of the evidence. *Jones v. State*, 357 Ark. 545, 182 S.W.3d 485 (2004). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Evidence is substantial if it is of sufficient force and character to compel reasonable minds to reach a conclusion and pass beyond suspicion and conjecture. *Id.* On appeal, the evidence will be viewed in the light most favorable to the State, considering only that evidence that supports the verdict. *Id.*

Carroll told Hughes that she could not arrest him by herself, he cussed her and complained loudly, and she felt the need to protect herself because of his demeanor, agitation, and comments. His “mouthing” continued when he was taken to the police department and made his telephone call, where he repeatedly expressed that he did not feel he should have been arrested, that the charges were trumped up, and that he would get or kill the b****. Hughes, the only female officer working at the time, was the officer who had arrested him. Officers Perry and Turner heard the threats against Hughes, and Carroll told Perry that officers would have to shoot him when he was released. Hughes denied that she and Carroll had a congenial conversation at the jail about his arrest.

Carroll’s recorded call from jail along with testimony of the State’s witnesses are of

sufficient force that reasonable minds could conclude that Carroll had the culpable mental state for terroristic threatening. The evidence taken together constitutes substantial evidence from which the jury could have found that Carroll's purpose in making these statements was to terrorize Hughes.

Affirmed.

GLADWIN and GLOVER, JJ., agree.